

Age Appropriate Design: A Code of Practice for Online Services

Response from the Commercial Broadcasters Association to the ICO

May 2019



A VOICE FOR COMMERCIAL BROADCASTERS IN THE UK

Introduction

1. The Commercial Broadcasters Association (COBA) is the UK industry body for multichannel broadcasters in the digital, cable and satellite television sector, and their on-demand services. COBA members operate a wide variety of channels, including news, factual, children's, music, arts, entertainment, sports and comedy. Their content is available on free-to-air and pay-TV platforms, as well as on-demand.
2. COBA members are arguably the fastest growing part of the UK television industry, and are increasing their investment in jobs, UK content and infrastructure. They make this investment without public support, direct or indirect.
 - Scale: In the last decade, the sector has increased its turnover by 30% to more than £5 billion a year. This is rapidly approaching half of the UK broadcasting sector's total annual turnover, and has helped establish the UK as a leading global television hub.¹
 - Employment: As part of this growth, the multichannel sector has doubled direct employment over the last decade.²
 - UK production: In addition, the sector has increased investment in UK television content to a record £1.1 billion per annum, up nearly 75% on 2011 levels.³
3. For further information please contact Adam Minns, COBA's Executive Director, at [REDACTED]

¹ Ofcom International Broadcasting Market Report 2013

² Skillset, Television Sector – Labour Market Intelligence Profile

³ COBA 2019 Content Report, Oliver & Ohlbaum Associates for COBA

Response

1. COBA and its members support providing appropriate protection for children accessing online services. However, we are deeply concerned that the approach set out is grossly disproportionate and will have serious unintended consequences.
2. COBA members are primarily broadcasters, but they also operate VoD services and websites. In so doing, they offer audiences a wide range of content, including news, factual and entertainment content. All of these services are already subject to statutory regulation in the form of specific Ofcom notifications for VoD services. This covers editorial standards and child protection, amongst many other areas. In addition, the vast majority of content provided by COBA members on their VoD services will have also been complied according to strict linear broadcasting rules, again overseen by Ofcom, when it is broadcast on television channels before being made available on VoD services. As such, this content is highly regulated already.
3. In addition, online services are subject to the CAP Code on advertising, which provides protection for children. For example, advertising age-restricted products on children's websites breaches the CAP Code and the ASA can intervene.
4. Our key concern is about the scope of the proposed code, which risks imposing a high level of additional regulatory burden on services even if they are in practice not accessed by children in any meaningful way, if at all, and are already subject to robust requirements. The proposals could require such services to put in place age verification processes that are likely to be off-putting for users, thus making the development of these services more challenging. We note that for many COBA members VoD remains a nascent market, where the margins are small. Indeed, for many members VoD services are still loss leaders.
5. These issues are compounded by the potential for non UK services to be exempt. Page 14 of the draft Code states: "if you have a lead supervisory authority other than the ICO and you do not have a UK establishment, this code will not apply." This creates a potential disadvantage for UK-based services.
6. In addition, the Code proposes substantial changes to the way many online services are designed and built today, including the use of technology that is not readily available. A three month transition period is not feasible.

7. Finally, the timing of these proposals is difficult as Government is already consulting on related issues as part of the Online Harms White Paper, which includes a code of practice that substantially overlaps with this Code.
8. We therefore respectfully believe that the proposals are not fit for purpose.